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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/671,370	09/25/2003	Mark E. Palm	P06144US00	1859
173 7590 11/27/2007 WHIRLPOOL PATENTS COMPANY - MD 0750 500 RENAISSANCE DRIVE - SUITE 102 ST. JOSEPH, MI 49085			EXAMINER PERRIN, JOSEPH L	
			ART UNIT 1792	PAPER NUMBER
			MAIL DATE 11/27/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/671,370

Applicant(s)

PALM ET AL.

Examiner

Joseph L. Perrin, Ph.D.

Art Unit

1792

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 October 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 16-27 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 16-27 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

1. Applicant's arguments with respect to claims 1-2, 4-7 & 14-15 have been considered but are moot in view of the cancellation of the claims and introduction of new claims 16-27. Any rejections over the new claims will take into consideration applicant's arguments regarding the cancelled claims.

Claim Rejections - 35 USC § 103

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

3. Claims 16, 19-20, 22, 24 & 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over EP '720 in view of FR 1355909 ("FR '909").

4. EP '720 discloses a conventional dishwasher having a top wall, bottom wall, side walls, wash racks and door, the dishwasher having a water distribution system comprising a disk (12) rotatably mounted to the top wall and having an upward facing surface with plural radial vanes (15) forming openings at the outer periphery of the disk, and a water nozzle (19) positioned on the top wall configured to spray a horizontal water jet (i.e. substantially perpendicular to the rotary disk axis) to redirect water radially outward and horizontally (i.e. substantially co-planar with the jetted water from the nozzle) for distribution in the washing chamber (see the abstract, Figures 1-2 and relative associated text).

While EP '720 discloses the disk having an upward facing surface with the radial vanes formed thereon and a top wall of the dishwasher, EP '720 does not disclose the disk having a duplicate facing surface facing downward. However, since EP '720 functions to redirect horizontally jetted water in the same manner as disclosed by applicant, the position is taken that simply duplicating the lower facing surface as an upper facing surface would yield the same predictable results of redirecting the jetted water horizontally. That is, there does not appear to be anything unexpected about providing the disk with a lower facing surface by simply duplicating the component to arrive at applicant's invention. Accordingly, the position is taken that it would have been obvious to one having ordinary skill in the art to duplicate the facing surface to provide both an upward and downward facing surface since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8; *In re Harza*, 274 F.2d 669, 124 USPQ 378 (CCPA 1960). The Examiner notes that no secondary considerations such as unexpected results has been disclosed for the use of the additional disk surface and no patentably distinguishing feature is evident as the record stands.

As described above EP '720 clearly shows the water nozzle and disk arrangement being discrete (see Figure 2) and positioned on the top wall for the purpose of jetting horizontal water outwardly to the disk and redirecting horizontally jetted water outwardly and horizontally from the rotating disk but does not expressly disclose the arrangement of the disk on the top wall and the nozzle on an adjacent wall for jetting water inwardly and horizontally to the disk. Thus, the difference between the

claimed invention and EP '720 is the arrangement of the disk and water nozzle as they both appear to provide the same predictable results of redirecting water horizontally and outwardly from the disk for distribution in a washing chamber. FR '909 is cited for the teaching that it is known to separate a water nozzle and a spray deflecting structure at a distance greater than the radius of the structure to redirect water for distribution in a washing chamber and to position the nozzle on a side wall adjacent the top wall (see, for instance, Figures 1-2). Because both EP '720 and FR '909 teach methods for spraying water to redirect the water into a wash chamber to wash dishes, it would have been obvious to substitute one known method (i.e. spraying outwardly from a deflector/disk to redirect water into the chamber; configuration of EP '720) for another (spraying inwardly to the deflector/disk to redirect water into the chamber; configuration of FR '909) to achieve the predictable results of redirecting jetted water from the rotary disk and into the wash chamber to wash the dishes. Simply stated, such substitution of a nozzle spraying outwardly from the inside the disk (i.e. EP '720) with a nozzle spraying inwardly from the outside of the disk (i.e. conceptually taught by FR '909 showing nozzle and deflector separate) to result in the same purpose (redirecting jetted water horizontally outwardly) would appear to yield the same predictable results and within the level and skill generally available to one having ordinary skill in the art since it has been held that rearranging parts of an invention involves only routine skill in the art. *In re Japikse*, 86 USPQ 70. Moreover, there would be a reasonable expectation of success in simply arranging the nozzle in any number of configurations including the nozzle on the top wall or sidewalls adjacent the top wall while providing water to the

water distribution disk since such a rearrangement would still provide the same function of spraying water from a nozzle and distributing water in the washing chamber via the disk in the manner described in EP '720 and claimed by applicant. The Examiner notes that the record is silent with respect to secondary considerations, such as unexpected results, and the simple modification of rearranging the placement of the nozzle would appear to be an obvious modification within the level and skill generally available to one having ordinary skill in the art in order to provide the same function of redirecting water for distribution in a washing chamber.

5. Claims 17, 23 & 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over EP '720 and FR '909, and further in view of U.S. Patent No. 6,260,565 to WELCH et al. or U.S. Patent No. 5,755,244 to SARGEANT et al. Recitation of EP '720 and FR '909 are repeated here from above. The combination describes a conventional front door dishwasher but does not describe a drawer type dishwasher. Both WELCH et al. and SARGEANT et al. teach that drawer type dishwashers are advantageously known in place of conventional front loading dishwashers (see entire documents). Because both conventional front loading dishwashers and drawer type dishwashers are known, it would have been obvious to substitute the nozzle/disk spray configuration as disclosed by the combination of EP '720 and FR '909 from a conventional front loading dishwasher to a drawer type dishwasher as disclosed by either WELCH or SARGEANT to achieve the predictable results of supplying wash water to a wash chamber in a dishwasher.

6. Claims 18, 21 & 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over EP '720 and FR '909, and further in view of EP '876 (previously cited). Recitation of EP '720 & FR '909 are repeated from the previous rejection. The combination of EP '720 & FR '909 teach or suggest the claimed invention with the exception of disclosing the use of plural disks.

The prior art is replete with teachings of increasing water distributing means for increased cleaning in a dishwasher and is a common knowledge concept in the dishwasher art and would be common sense to one having ordinary skill in the art. For instance, EP '876 discloses a first and second water spraying means (36, 45, (fig. 2)) on the top wall of the washing chamber of a dishwasher. It would have been obvious for one skilled in the art at the time the invention was made to use a second water distribution system, as taught by EP '876, in the EP '720 dishwasher in order to arrive at the claimed dishwasher for the well understood concept of providing a dishwasher with increased water distribution for increased cleaning. Thus, duplicating the number of water distributing means to effectively improve/increase cleaning would be well within the level and knowledge generally available to one having ordinary skill in the art and is considered an obvious modification. It has been held that mere duplication of the essential working parts of a device involves only routine skill in the art and has no patentable significance unless a new and unexpected result is produced. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8; *In re Harza*, 274 F.2d 669, 124 USPQ 378 (CCPA 1960). An obviousness determination is not the result of a rigid formula

disassociated from the consideration of the facts of a case. Indeed, the common sense of those skilled in the art demonstrates why some combinations would have been obvious where others would not. *Leapfrog Enterprises Inc. v. Fisher-Price Inc.*, 82 USPQ2d 1687 (Fed. Cir. 2007); see also *KSR International Co. v. Teleflex Inc.*, 82 USPQ2d 1385 (U.S. 2007).

Conclusion

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

8. A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph L. Perrin, Ph.D. whose telephone number is

(571)272-1305. The examiner can normally be reached on M-F 7:00-4:30, except alternate Fridays.

10. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael E. Barr can be reached on (571)272-1414. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

11. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Joseph L. Perrin/
Joseph L. Perrin, Ph.D.
Primary Examiner
Art Unit 1792

JLP